

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Lake Okeechobee (the "Lake") is the largest body of freshwater in the southeastern United States and covers a surface area of 730 square miles with an average depth of 8.6 ft. The watershed of the Lake stretches from just south of Orlando to areas that border the lake on the south, east, and west, covering approximately 3.5 million acres. The Lake functions as the central part of a large interconnected aquatic ecosystem in south Florida and provides flood protection; water supply for agriculture, urban areas, and the environment; and habitat for wading birds and migratory waterfowl. The Lake also supports a multi-million dollar sport and commercial fishery.

However, the Lake has been threatened in recent decades by excessive phosphorus loading, harmful high water levels, and rapid expansion of exotic plants. In 2000, the Legislature enacted the Lake Okeechobee Protection Act (the "Act")¹, finding that improvement to the hydrology and water quality of the Lake is essential to the protection of the Everglades, and that hydrology and water quality changes have resulted in algal blooms and other adverse impacts to water quality both in the Lake and in downstream receiving waters. The Legislature also found that excessive levels of phosphorus have resulted in an accumulation of phosphorus in the sediments of the Lake and that, if not removed, internal phosphorus loads from the sediments are expected to delay responses of the Lake to external phosphorus reductions.²

The Act requires immediate implementation of the Lake Okeechobee Protection Program (the "Program") to address reductions of phosphorus loading to the Lake from both internal and external sources, and provides specific phosphorus reduction objectives. These objectives will be accomplished by achieving and maintaining compliance with water quality standards in the Lake and its downstream receiving waters, through a watershed-based, phased, comprehensive, and innovative protection program designed to reduce internal and external phosphorus loads to the Lake and implement long-term solutions.

In order to implement the Program, the Act requires the South Florida Water Management District (SFWMD), in cooperation with the Florida Department of Environmental Protection (FDEP) and the Florida Department of Agriculture and Consumer Services (FDACS), to complete the Lake Okeechobee Protection Plan (the "Plan") by January 1, 2004. The Plan was completed in a timely manner and identifies alternative approaches, schedules, and costs to meet the total phosphorus total maximum daily loads of 140 metric tons by the year 2015, as required by the Act.

The final Plan includes the following components: owner-implemented best management practices through operational changes, cost-share best management practices through structural changes, and regional projects outside of the Comprehensive Everglades Restoration Plan (CERP). However, the majority of phosphorus load reductions are expected to be achieved through regional solutions contained in the CERP Lake Okeechobee Watershed Project.

¹ Chp. 00-130, Laws of Florida; s. 373.4595, F.S.

² s. 373.4595(1), F.S.

EFFECT OF PROPOSED CHANGES

The bill amends s. 373.4595(1), F.S., to incorporate the following legislative findings into the Lake Okeechobee Protection Act:

- In order to achieve the goals and objectives of the Lake Okeechobee Protection Act, and to effectively implement the Lake Okeechobee Watershed Phosphorous Control Program, the state must expeditiously implement the Lake Okeechobee Protection Plan;
- A continuing source of funding is needed to effectively implement a phosphorus control program that initially targets the most significant sources contributing to phosphorous loads within the watershed and continues to address other sources as needed to achieve the phased phosphorus load reductions; and
- The Legislature intends to provide continued funding for the purpose of implementing the Plan and achieving phosphorous load reductions consistent with total maximum daily loads otherwise established by law.

The bill further amends s. 373. 4595(3), F.S., to impose specific requirements regarding implementation of the Plan as follows:

- Requires the SFWMD, FDEP, and the FDACS to jointly establish annual funding priorities and to implement the Plan in a manner consistent with each agency's statutory authority and responsibility;
- Requires assignment of the highest priority for annual funding to programs that address phosphorous sources with the highest relative contribution to phosphorus loading and the greatest potential for phosphorus reduction;
- Requires the agencies, when establishing annual funding priorities, to also consider the need for regulatory compliance, the extent to which the program or project is ready to proceed, and the availability of federal matching funds or other nonstate funding; and
- Requires maximization of federal and other nonstate funding to the greatest extent practicable.

The bill revises the definition of the Lake Okeechobee watershed to reference the Plan instead of the 1997 SWIM plan update. And finally, the bill removes obsolete references to past dates.

The bill becomes effective on July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s.373.4595, F.S., regarding the implementation of the Lake Okeechobee Protection Plan.

Section 2. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to comments provided by the SFWMD, the total estimated cost of the Plan is \$341.5 million (2005 dollars), excluding the CERP Lake Okeechobee Watershed Project. Once operation and maintenance costs and cost-share funds have been backed out of this total, approximately \$120.8 million (2005 dollars) will need to be provided through state and SFWMD funding processes.

Although the bill does not provide for an appropriation, according to the FDACS, any General Revenue dollars appropriated would be transferred from the FDEP to the Office of Water Policy Coordination for contract expenditures in Special Category – Best Management Practices/Cost Share 104128. The Best Management Practices/Cost Share dollar amount would be spent on agricultural Best Management Practices implementation for water quality improvements.

This would include research and cost-share payments to private agricultural producers to offset a portion of the costs of implementing structural Best Management Practices on their property to meet phosphorus load reductions associated with the Lake Okeechobee Total Maximum Daily Load. By leveraging federal funding, these cost-share payments would make it possible for producers who otherwise would be unable to afford water quality improvements to participate in the program, would increase the number of producers who participate, and accelerate the reduction of phosphorus inputs to Lake Okeechobee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take an action requiring the expenditure of funds, reduce the authority that cities or counties have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require the promulgation of rules by nor alter the rulemaking authority of any state agency

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 23, 2005, the Water and Natural Resources Committee favorably approved a strike-all amendment to HB 155 by Rep. Machek. The amendment incorporated everything in HB 155, made several deletions in s. 373.4595, F.S., of obsolete references to dates, and revised the definition of the Lake Okeechobee watershed to incorporate reference to the Lake Okeechobee Protection Plan. Changes to the bill have been updated in the analysis.